No. 94-131

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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

MARIA ELENA TREVINO,

Petitioner,

—v.—

DIANA LEEDS and
METROPOLITAN LIFE INSURANCE COMPANY,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

RESPONDENT'S BRIEF OF METROPOLITAN LIFE INSURANCE COMPANY IN OPPOSITION

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QUESTIONS PRESENTED

1. Does petitioner's failure to challenge the Office of Personnel Management's rejection of her attempted self-designation as the beneficiary of her husband's life insurance proceeds payable under the Federal Employees' Group Life Insurance Act of 1954, codified at 5 U.S.C. §§ 8701-8716 ("FEGLIA"), preclude her from obtaining those proceeds now?

2. Did the United States Court of Appeals for the Fifth Circuit err when it required that the benefits payable upon the death of a former federal employee be paid in accordance with FEGLIA's statutory order of precedence?

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ON PETITION FOR A WRIT OF CERTIORARI TO THE
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RESPONDENT'S BRIEF OF METROPOLITAN LIFE INSURANCE COMPANY IN OPPOSITION

Respondent Metropolitan Life Insurance Company ("MetLife") respectfully requests that this Court deny the petition for a writ of *certiorari*, seeking review of a judgment of the United States Court of Appeals for the Fifth Circuit which affirmed the unpublished decision of the court below, 20 F.3d 1171 (1994), petition for rehearing denied, slip opinion, No. 93-7451 (May 13, 1994) (unofficially reported at 1994 U.S. App. LEXIS 11827).

STATUTES AND REGULATIONS INVOLVED

5 U.S.C. § 8705. Death claims; order of precedence; escheat

(a) The amount of group life insurance and group accident death insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

> First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office or, if insured because of receipt of annuity or of benefits under subchapter I of chapter 81 of this title as provided by section 8706(b) of this title, in the Office of Personnel Management. For this purpose a designation, change or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.
>
> Second, if there is no designated beneficiary, to the widow or widower of the employee.
>
> Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.
>
> Fourth, if none of the above, to the parents of the employee or the survivor of them.
>
> Fifth, if none of the above, to the duly appointed executor of administrator of the estate of the employee.
>
> Sixth, if none of the above, to other next of kin of the employee entitled under the laws of the domicile of the employee at the date of his death.
>
> . . .

5 U.S.C. § 8709. Insurance policies.

. . .

(d)(1) The provisions of any contract under this chapter which relate to the nature or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any law of any State of political subdivision thereof, or any regulation issued thereunder, which related to group life insurance to the extent that the law or regulation is inconsistent with the contractual provisions.

5 C.F.R. § 870.101 Actions on the policy

Life and accidental death and dismemberment benefits ("basic insurance") shall be payable in accordance with a policy of policies purchased by OPM from the Metropolitan Life Insurance Co., 1 Madison Avenue, New York, N.Y. 10010, under section 8709 of title 5, United States Code. Actions at law or in equity to recover on an insurance policy, in which there is not alleged any breach of any obligation undertaken by the United States, shall be brought against the insurance company.

5 C.F.R. § 870.102 Correction of an error, mistake or omission

OPM's Associate Director for Retirement and Insurance or his/her designee may order correction of an error, mistake, or omission upon a showing satisfactory to the Associate Director or his/her designee that it would be against equity and good conscience not to do so.

5 C.F.R. § 870.902 Designation of beneficiary.

(a) A designation of beneficiary shall be in writing, signed, and witnessed by two people, and received in the employing office (or in OPM, in the case of: (1) An annuitant or (2) a compensationer whose basic life insurance is continued) before the death of the insured.

. . .

(e) A change of beneficiary may be made at any time and without the knowledge or consent of the previous beneficiary. This right cannot be waived or restricted.

STATEMENT OF THE CASE

Antonio G. Trevino, a former federal employee, designated respondent Diana Leeds (with whom he lived after marrying petitioner, Maria E. Trevino) as the beneficiary of FEGLIA proceeds payable upon his death. FEGLIA contains a mandatory order of precedence. It requires that benefits "shall" be paid *first* "to the beneficiary or beneficiaries designated *by the employee*," and, *second*, "*if there is no designated beneficiary*, to the widow or widower of the employee." 5 U.S.C. § 8705(a) (emphasis added). Hence, under the statutory order, Leeds, the designated beneficiary, "shall" be paid; Maria, the surviving widow, would be entitled to payment only "if there [were] no designated beneficiary." *Id.* There was: Leeds.

Maria nevertheless maintains that years after Antonio's designation of Leeds but several months before his death, Antonio became incompetent. Maria further maintains that she somehow learned Antonio had designated Leeds as his beneficiary (he had never designated Maria). She therefore obtained counsel and attempted to file a change-of-beneficiary form by which she purported to designate herself as beneficiary, revoking Antonio's designation of Leeds on the ground that she had "never consented" to the designation and that she was empowered by Texas law to designate herself. OPM, with which Antonio was required to file a change-of-beneficiary form in order for it to be effective, rejected Maria's self-executed effort, pointing out that it was not a designation "by the employee" and was therefore "not acceptable." Maria failed to challenge that determination.

After Antonio's death, Maria claimed the proceeds payable under FEGLIA. Metropolitan Life Insurance Company

("MetLife"), which insures the FEGLIA policy, commenced a combined interpleader and declaratory judgment action, maintaining that it was entitled to rely on FEGLIA's statutory order of precedence in disbursing FEGLIA proceeds, that the governing statute provided clear and convincing evidence that Congress intended a "designated" beneficiary to take precedence over a "widow," and that Leeds was the beneficiary "designated by the employee." Maria brought her own complaint, alleging interference with various rights. The United States Court of Appeals for the Fifth Circuit enforced the statutory order of precedence as written, requiring that Leeds be paid.

REASONS WHY THE PETITION SHOULD BE DENIED

I. MARIA FAILED TO CHALLENGE THE UNITED STATES' REJECTION OF HER ATTEMPTED SELF-DESIGNATION; SHE IS PRECLUDED FROM NOW ARGUING THAT SHE IS THE PROPER BENEFICIARY.

FEGLIA requires that a designation of beneficiary be made "by the employee" and filed with the appropriate federal office. 5 U.S.C. § 8705(a).[1] Maria, purporting to act under Texas law, attempted to file with OPM a self-designation of her husband's FEGLIA benefits. Nine months before Antonio's death, OPM rejected that effort, stating, in writing, that Maria's attempted self-designation was not a designation "by the employee," as FEGLIA requires, and was therefore "not acceptable." Maria failed to challenge that determination, waiting until after Antonio's death to seek the FEGLIA benefits in question.

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[1] When Maria attempted to file her self-designation, Antonio was retired. As a retired employee entitled to continued FEGLIA benefits, he was required to file any designation of beneficiary with OPM. *See id.*; *see also* 5 C.F.R. § 870.902(a).

The Code of Federal Regulations specifically provides that "actions at law or equity" to recover under the FEGLIA policy must be brought against MetLife, but such actions do not extend to those in which "there is . . . alleged any breach of any obligation undertaken by the United States . . . ." 5 C.F.R. § 870.101. It is therefore obvious that when an obligation has allegedly been breached which *was* an obligation of the United States, the United States, at a minimum, must be sued.

The United States—*not* MetLife—is charged with responsibility for accepting designations of beneficiary under FEGLIA. *See* 5 U.S.C. § 8705(a); *see also* 5 C.F.R. § 870.902. If Maria had wished to challenge OPM's rejection of her self-designation, she should have sued the United States or challenged its administrative determination. *See* C.F.R. § 870.102 (empowering OPM to "order correction of an error . . . upon a showing satisfactory . . . that it would be against equity and good conscience not to do so"). She did not do so. She is now precluded from seeking to become the beneficiary of Antonio's proceeds, the United States having previously found, in an unchallenged determination, that she was "not [an] acceptable" beneficiary.

II. BECAUSE PETITIONER RAISES NO "SPECIAL" OR "IMPORTANT" REASON FOR GRANTING THE WRIT, THE PETITION SHOULD BE DENIED.

Rule 10 of this Court permits the discretionary writ of *certiorari* to be granted "*only* when there are special and important reasons therefor." (Emphasis added). Those reasons may include a decision of a United States court of appeals "in conflict with the decision of another United States court of appeals on the same matter . . . ." Rule 10.1(a). Here, there is a unanimity of opinion that FEGLIA's statutory order of precedence prevails over claims based on state law, including those based on a state's domestic relations laws.

Not only is every United States court of appeals, including that of the Fifth Circuit, now in agreement that FEGLIA's statutory order of precedence must be enforced as written, but *all* authoritative case law agrees with that conclusion. *See Metropolitan Life Ins. Co. v. Christ*, 979 F.2d 575 (7th Cir. 1992), *overruling Rollins v. Metropolitan Life Ins. Co.*, 863 F.2d 1346 (7th Cir. 1988); *Dean v. Johnson*, 881 F.2d 948 (10th Cir.), *cert. denied*, 493 U.S. 1011 (1989); *O'Neal v. Gonzalez*, 839 F.2d 1437 (11th Cir. 1988); *Metropolitan Life Ins. Co. v. McMorris*, 786 F.2d 379 (10th Cir. 1989); *Huff v. Metropolitan Life Ins. Co.*, 675 F.2d 119 (6th Cir. 1982); *Metropolitan Life Ins. Co. v. Manning*, 568 F.2d 922 (2d Cir. 1977); *Lewkowicz v. Lewkowicz*, 761 F. Supp. 48 (E.D. Mich. 1991); *Metropolitan Life Ins. Co. v. McShan*, 577 F. Supp. 165 (N.D. Cal. 1983); *Metropolitan Life Ins. Co. v. Knowles*, 514 F. Supp. 515 (N.D. Ga. 1981); *Adams v. Macy*, 314 F. Supp. 399 (D. Md. 1970); *Pekonen v. Edgington*, 298 F. Supp. 158 (E.D. Cal. 1969); *Law v. Law*, 192 Ga. App. 367, 384 S.E.2d 891, 894 (Ga. App.), *cert. denied*, 192 Ga. App. 902 (1989); *Metropolitan Life Ins. Co. v. Potter*, 533 So. 2d 589 (Ala. 1988); *Metropolitan Life Ins. Co. v. Trainor*, 754 P.2d 427 (Colo. App. 1988); *McGovern v. Broadstreet*, 720 P.2d 589 (Colo. App. 1985); *Estate of Hanley v. Andersen*, 693 P.2d 198 (Wash. App. 1984).

Moreover, petitioner's argument that FEGLIA's mandatory order of precedence must yield to Texas Community Property laws was disposed of by this Court's opinion in *Ridgway v. Ridgway*, 454 U.S. 46 (1981), which held to the contrary under the analogous Servicemen's Group Life Insurance Act of 1965 ("SGLIA"), modeled on FEGLIA.[2] In *Ridgway*, this Court found that "Congress ha[d] spoken with force and clarity in directing that [SGLIA] proceeds belong to the named

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[2] SGLIA "was patterned in most respects after the FEGLI program." Statement of Thomas K. Turnage, Administrator of Veterans' Affairs, introduced by Sen. Cranston, 133 CONG. REC. S5416-02 (daily

beneficiary and no other," including a spouse. *Id.* at 55-56. Noting that, under SGLIA, "[f]ederal law and federal regulations bestow upon the [insured] the absolute right to designate the policy beneficiary," this Court concluded that "[t]hat right is personal to the [insured] alone" and "is *not* a shared asset subject to the interest of another, as is community property." *Id.* at 59-60 (emphasis added).

FEGLIA insureds have the same freedom of designation as SGLIA insureds—a freedom which "*cannot be waived or restricted.*" 5 C.F.R. § 870.902(e) (emphasis added). Moreover, the obvious fact that Congress gave a "designated" beneficiary the "*first*" right to obtain benefits and a "widow" only a "*second[ary]*" right, which ripens only "*if there is no designated beneficiary,*" 5 U.S.C. § 8705(a) (emphasis added), indicates that Congress intended a "designated" beneficiary to take precedence above all others, including a surviving spouse, such as Maria. Petitioner's argument that Congress, through the structure of FEGLIA, failed to indicate clearly that domestic relations laws, including Texas Community Property laws, would be displaced is refuted both by the relevant statutory and regulatory language and by the analogous precedent of *Ridgway*. *See Metropolitan Life v. Christ*, 979 F.2d at 578, 582 (domestic relations laws are displaced by FEGLIA's statutory order of precedence; *Ridgway* is controlling). Nothing "special" or "important" therefore remains for this Court to decide which Congress did not make clear from the face of the statute or which has not already been resolved by *Ridgway*.

Petitioner's attempt to side-step the applicability of *Ridgway* by focusing on FEGLIA's express pre-emption clause is a turn which leads to the same finale. First, the Fifth Circuit did not rely on that clause to reach its conclusion; rather, it relied on Maria's failure to comply with *state-law* requirements for designating herself as beneficiary of her husband's

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ed. Apr. 23, 1987); *see also Stribling v. United States*, 419 F.2d 1350, 1353-54 (8th Cir. 1969).

federal life insurance proceeds. A-6 - A7.[3] Second, *that* clause states that "[t]he provisions of [the FEGLIA] contract . . . which *relate to* the nature of extent of . . . benefits (*including payments with respect to benefits*) shall supersede and preempt any law of any State . . . *which relates to group life insurance* to the extent that the law or regulation is inconsistent with the contractual provision." 5 U.S.C. § 8708(d)(1) (emphasis added).

The FEGLIA group life insurance contract incorporates the statutory order of precedence, word for word. It, like FEGLIA, therefore requires that benefits be paid to the "designated" beneficiary—Leeds—before Maria, a surviving widow. According to Maria, Texas Community Property laws would require *her* to be paid before Leeds. Those laws therefore necessarily "relate to"[4] the FEGLIA "group life insurance," conflict with the relevant contractual provisions and are pre-empted, whether express pre-emption is considered under section 8709(d)(1) or pre-emption is implied from the structure and purpose of FEGLIA, including its mandatory order of precedence. *See Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138 (1990) (reiterating that state laws may be displaced either by "explicit or implied [federal] pre-emption"); *see also Metropolitan Life v. Christ*, 979 F.2d at 579 (FEGLIA's pre-emption clause only "reinforces the conclusion" that the order of precedence displaces a state's domestic relations laws).

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[3] All "A." references are to the Appendix of the Petition.

[4] When "relate to" language is included in a federal pre-emption clause, it is broadly construed. *See, e.g., Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 97 (1983) (broadly construing such language in the context of the Employee Retirement Income Security Act of 1974).

CONCLUSION

Petitioner is barred from seeking to become the "beneficiary" of the proceeds in question because she either failed to exhaust available administrative remedies or failed to join the United States as an indispensable party. Moreover, she has stated no special or important reason for granting the writ. There is no dispute among the United States courts of appeals on the question she raises, which is either answered by the face of the governing statute or has been resolved by this Court in *Ridgway v. Ridgway*. The final judgment of the Court of Appeals should therefore be affirmed.

Respectfully submitted,

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